Supreme Court U.S.
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No. 01-1115

In The

Supreme Court of the United States

JASON "K" JENSEN,

Petitioner,

v.

THE STATE OF UTAH, UTAH STATE SUPREME COURT, UTAH STATE LEGISLATURE, and UTAH STATE BAR,

Respondents.

On Petition For Writ Of Certiorari To The Utah Supreme Court

BRIEF OF UTAH STATE BAR IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Petitioner's statement of the case weaves a fairly complicated picture for what is actually a very simple case. The Utah Supreme Court solely determines admission to the practice of law in Utah. The Utah Supreme Court requires an applicant to be a graduate of an American Bar Association (ABA) approved law school. The petitioner, Mr. Jensen, has not graduated from any law school so the Utah Supreme Court has refused to consider his application. Rather than qualifying for admission to the Utah State Bar by attending a law school, petitioner seeks here to have this court apparently force the Utah Supreme Court to allow petitioner to take the Utah State Bar examination and be admitted to practice law in Utah.

The word "apparently" is used in the foregoing paragraph because a close reading of the petition for certiorari shows that no specific relief is requested so respondent is left to derive from the argument made what relief petitioner seeks from this court.

SUMMARY OF ARGUMENT

This brief shows that petitioner presents no significant issue for this Court to grant certiorari. Petitioner is a person unqualified to practice law according to the Rules of Admission of the Utah Supreme Court. The law recognizes that reasonable conditions for admission to the practice of law may be imposed.

Petitioner fails to draw in constitutional principles that would invoke review by certiorari. The Utah

Supreme Court considered his petition for an exception to the Rules of Admission and denied it without denying him any right of due process.

The petition for certiorari should be denied.

I. ARGUMENT

A. Legal Framework of Bar Admission

An understanding of the legal framework for admission to the Utah State Bar helps to focus the petitioner's claims. The foundation of the legal framework is found in the Utah Constitution at Article VIII, Section 4, wherein it states:

> The Supreme Court by rule shall govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law.

The Utah Supreme Court, in turn, uses the Utah State Bar to conduct the process of admission to the Bar. The Utah State Bar has the status of an "integrated bar". *See In re: Integration in Governance of the Utah State Bar*, 632 P.2d 845 (Utah 1981). Utah Supreme Court Order Amending Rules for Integration and Management of the Utah State Bar, Case No. 15436-A (May 27, 1993) requires that all rules governing admission to the Utah State Bar be approved by the Utah Supreme Court. App. 1.

The Utah State Bar carries out the duties of assisting the Utah Supreme Court in admitting persons to the practice of law in accordance with the Rules Governing Admission to the Utah State Bar. Those rules include a requirement that student applicants for admission be a

graduate of a law school approved by the American Bar Association (ABA). See Rule 3, Rules Governing Admission to the Utah State Bar. App. 8.

The Utah Supreme Court recognizes that a person may not be excluded from the practice of law in contravention of due process and equal protection requirements of the Fourteenth Amendment. *Petition of Randolph-Seng*, 669 P.2d 400 (Utah 1983).

B. Certiorari Should Not Be Granted

1. Introduction

Rule 10, Supreme Court Rules, make clear that a petition for a Writ of Certiorari will be granted only for "compelling reasons". The rule goes on to provide in subparts (b) and (c) that petitions arising from state courts may be appropriate where an important federal question has been decided in a way that conflicts with decisions of other state courts or with United States Courts of Appeal, where a state court has decided an important question of federal law that has not been settled by the Supreme Court or was decided in a way that conflicts with relevant decisions of the Supreme Court.

This court has declared that the principal purpose of certiorari is to resolve conflicts between courts on the meaning of provisions of federal law. *Braxton v. U.S.*, 500 U.S. 344 (1991).

An examination of the issues presented by petitioner, without exhaustively addressing the merits, shows that the petition should be denied.

2. Separation of Powers Issues Should Not Receive Review

Petitioner's first stated issue is whether the conveyance of a legislative function from the Utah legislature to the state supreme court over the practice of law constitutes a violation of the separation of powers doctrine. One searches in vain through the petition for certiorari for an explanation of how this issue falls within the criteria for granting certiorari. Petitioner's argument, beginning on p. 11 of the petition, essentially is a philosophical discussion falling woefully short of meeting the requirements for a grant of certiorari.

The argument made about separation of powers is also substantively deficient. Petitioner complains on p. 12 of his petition that the Utah legislature transferred "all of the power over the practice of law" to the Utah Supreme Court through an amendment to the Utah constitution. This premise is simply wrong beyond dispute. Article XXIII, Section 1 of the Utah Constitution shows that while the legislature may propose constitutional amendments, they are not effective until approved by a statewide referendum. App. 32. The adoption of a constitutional amendment is done by the citizens of Utah, not the Utah legislature.

Petitioner fails to show where the separation of powers argument was presented to the Utah Supreme Court and further fails to meet the fundamental requirement of Rule 10 showing that a substantial federal question is presented that ought to be resolved by the court.

Absent a specific showing that this question is appropriate for review, the court should deny consideration.

3. The Utah State Bar Relationship With The Utah Supreme Court Does Not Merit Review

The second issue raised by the petitioner is whether the Utah State Bar exercises a prejudicial advantage over opponents in litigation before the Utah Supreme Court due to the Bar's integration. A reading of the petition again fails to show that this issue is one suitable for review on certiorari under the standards of Rule 10. Petitioner identifies no conflict in decisions between courts and further fails to connect that argument to recognized constitutional doctrine.

Petitioner overlooks that when the Utah State Bar acts pursuant to the order of integration of the Utah Supreme Court that it *is* the Utah Supreme Court acting. The Utah Supreme Court describes the relationship in a case concerning attorney discipline as the Utah State Bar, when acting within the authority given by the Utah Supreme Court, acting as an "arm" of the Utah Supreme Court. *Pendleton v. Utah State Bar*, 16 P.3d 1230 (Utah 2000). See also *Black v. Clegg*, 938 P.2d 293 (Utah 1997) and *Bailey v. Utah State Bar*, 846 P.2d 1278 (Utah 1993), wherein the Utah Supreme Court found the Utah State Bar to be acting as an arm of the court pursuant to the rules of integration. The obvious practical operation of the relationship is that the Utah Supreme Court uses the Utah State Bar to carry out qualifying and administrative functions of considering applicants for admission.

The relationship between the Utah State Bar and the Utah Supreme Court is such that the petitioner's argument is really that the Supreme Court should not be allowed to utilize its own process to determine the suitability of an applicant for admission. Petitioner's argument, taken to its logical conclusion, is that the Utah Supreme Court should make decisions about admission to the Utah State Bar without any administrative assistance, thus practically reducing the process to individuals petitioning directly to the justices of the Utah Supreme Court. Petitioner fails to articulate any legally significant facts about the relationship between the Utah Supreme Court and the Utah State Bar to provide a basis for review under U.S. Supreme Court Rule 10.

4. Petitioner Has No Right To Sit For The Utah State Bar Examination Absent Full Qualification

The third question raised by the petitioner is whether he has an absolute right to sit for the Bar examination and thereby ignore and avoid the requirements for admission to the Utah Bar promulgated by the Utah Supreme Court. He advances facts and arguments in his petition explaining that he has determined himself to be qualified to practice law and therefore ought to be allowed to take the Bar examination.

This Court has recognized that a state supreme court may have rules governing bar admission that, when evenly administered, are acceptable.

For example, in *Schware v. Board of Bar Examiners of the State of New Mexico*, 353 U.S. 232, (1957), the Court

considered the denial of admission to the practice of law by one found unfit because of past membership in the communist party. The Court reviewed constitutional law applicable to admission to the practice of law and stated that a state can require high standards of qualification provided those qualifications have a rational connection to the applicant's fitness or capacity to practice law. The requirement here that the petitioner be a graduate of an approved law school is a rational connection to the fitness of practice of law.

In *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983) this Court considered claims of two persons who had been denied permission to sit for the District of Columbia Bar examination where those persons had not graduated from an ABA approved law school. The issue presented in that case was which federal court was appropriate for review of the District of Columbia Court of Appeals decision to not let the applicants take the bar examination. The Court held that denial of permission to sit for the bar examination was a judicial act which could be reviewed on certiorari. The case is important here because the Court recognized that the state interest in regulating admission to the state bar is high. *See Goldfarb v. Virginia State Bar*, 421 U.S. 773, (1975).

Similarly, in *Hoover v. Ronwin*, 466 U.S. 558 (1984), this court again recognized, in a case where one who failed a bar examination claimed the administration of admissions violated the Sherman Act, that the state courts had a strong state interest in imposing requirements for admission to the practice of law.

In summary, petitioner falls short of presenting a claim for review that he should be allowed to take the Utah Bar examination because he believes he is ready to practice law. The Utah Supreme Court has a recognized interest in establishing rational requirements which limit the right of the petitioner to be admitted to the practice of law. Petitioner fails to show that there was any consideration in his rejection by the Utah Supreme Court other than his failure to meet this rational qualification. Absent a showing, this court has nothing to review on certiorari.

5. No Due Process Issue Exists For Review

The final issue raised by the petitioner is whether the Utah Supreme Court deprived the petitioner of due process when he was "denied his day in court" or because the Utah Supreme Court "refused to refer the matter to the Bar Commission". The factual thrust of the argument appears to be that petitioner believes the Utah Supreme Court should have held an evidentiary hearing about his fitness to practice law while ignoring his admitted inability to comply with the requirement that he graduate from an approved law school. Petitioner fails again to prove any issue for review on certiorari.

The record, included in the appendix to Jensen's petition, shows that on May 2, 2001, petitioner filed a petition with the Utah Supreme Court asking a waiver of the requirement of graduation from an approved law school. The Utah Rules Governing Admission to the Utah State Bar have no exception provision for persons who believe life experience would waive the law school

requirement. The Utah State Bar filed an opposing memorandum and the petition was set on the court's routine law and motion calendar on June 18, 2001. According to Mr. Jensen in his petition on p. 8, he was uncertain of his procedural requirements and so filed a legal brief in support of the petition.

The Utah Supreme Court, without oral argument, denied the petition in an order dated June 18, 2001. Petitioner thereafter sought a review *en banc*, which was also denied in an order from the Utah Supreme Court dated July 16, 2001.

This detailed procedural history is important because it shows that the heart of the petition is to complain that there was not an oral evidentiary presentation to the Utah Supreme Court as the basis for claiming a deprivation of due process. The Utah Supreme Court had before it the verified petition and Mr. Jensen's brief at the time it refused to grant him a waiver of the law school requirement.

An examination of the petition for certiorari shows that the petitioner was not entitled to an evidentiary hearing as a matter of constitutional law. Petitioner cites to *Willner v. Committee on Character and Fitness*, 373 U.S. 96 (1963). A bar applicant in that case was denied admission to the New York Bar where he had passed the bar examination but was denied admission on grounds of character. This Court found that he had been denied due process where he was not given an opportunity to confront accusers about his character. This Court held that he was entitled to a full and fair hearing which meant that

he would be fully advised of the allegations against him and would be given an opportunity to contest them.

Willner does not stand for the proposition that petitioner here should get a hearing as the legal context is not the same. The sole grounds upon which Jensen was denied the opportunity to take the Utah State Bar examination and be considered for admission to the Bar is that he has not graduated from an approved law school. He admits that and no hearing will change that fact. What he attempts to do by this judicial process is create his own rules of admission to practice law whereby he asserts the established rules of admission should not apply to him as written and the Utah Supreme Court should therefore adjust its procedure to meet whatever contention he wants to raise.

Due process requires only that Jensen be given notice and fair opportunity to present his application. *Goldsmith v. U.S. Board of Tax Appeals, D.C.*, 270 U.S. 117 (1926). What constitutes the scope of that right is dependant upon the interest and circumstance of the dispute presented. *Cafeteria and Restaurant Workers Union Local 473, AFL-CIO) v. McElroy*, 367 U.S. 886 (1961). It is not uncommon for courts to act without oral argument or a hearing where the issues would not require it for full consideration. The principle is demonstrated well by Rule 34, Federal Rules of Appellate Procedure, which provide that oral argument is allowed except where the judges find that the facts and legal arguments are adequately presented in the written briefs. Indeed, this court's own Rule 21.3 generally denies oral argument on motions unless the court directs otherwise.

With petitioner having made a full written presentation of his argument to the Utah Supreme Court in two documents in which he admitted he did not meet the law school requirement, there is no apparent constitutional basis under due process principles to require the Utah Supreme Court to hold an evidentiary hearing. The Utah Supreme Court could apply its own rule of bar admission on Jensen's own pleadings.

II. CONCLUSION

This brief shows the Court should deny the petition for certiorari. Utah has a strong state interest in creating rules to determine the qualification of those who practice law in Utah. Petitioner clearly does not meet one of those key rules by his own admission. The Utah Supreme Court considered his written petition and supporting memorandum or brief and violated no constitutional principle when it denied his petition.

Petitioner fails to show any compelling interest of this court in becoming the repose of appeal for those who fail to meet reasonable requirements to be admitted to practice law. Jensen presents no substantial federal question or conflict between court jurisdictions that needs resolution.

The Utah State Bar respectfully requests denial of the petition.

Respectfully submitted,

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IN THE SUPREME COURT
OF THE STATE OF UTAH

In Re UTAH STATE BAR, Petitioner.	) Order Amending Rules) for Integration And) Management of the Utah) State Bar)) S.Ct. Docket No. 15436-A)

This matter originally came before the Court in a petition filed by the Board of Bar Commissioners (Board) on September 30, 1977 for approval and adoption of a "Rule for Integration of the Utah State Bar" subsequently consolidated with a Petition filed in May of 1979 by certain members of the Bar to "Adopt a Rule to Govern the Right to Practice Law in Utah Without Compulsory Integration" followed by the Legislative General Counsel filing a brief in opposition to both and asserting the Legislature's interest.

On June 30, 1981 this Court issued a PER CURIAM opinion granting the Board's petition integrating the Bar[1]. Thereafter the authority of the Court to govern the practice of law by adopting appropriate rules was incorporated in 1985 in Art. VIII, Sec. 4 of the Utah Constitution.

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[1] *In re Integration And Governance of the Utah State Bar*, 632 P. 2d 845 (Utah 1981).

Exercising its ultimate authority to govern the practice of law without engaging in the daily management and operations of the Bar, the Court has continued to meet with the Board to develop a revised mission statement consistent with Recommendation No. 2 of the Final Report of the Utah Supreme Court's Special Task Force (Task Force), dated November 1, 1992 and to express the delegation of authority by the Court to the Board consistent with Recommendation No. 3 of the Task Force Report, and being now fully advised in the premises, hereby,

SUA SPONTE ORDERS,

1. Section (A) 1. of the Rules for Integration And Management of the Utah State Bar adopted on July 1, 1981 is hereby repealed and amended as follow:

SECTION (A) ORGANIZATION OF THE UTAH STATE BAR

1. Under the power vested to it by the Constitution and laws of the State of Utah, the Utah Supreme Court hereby creates and perpetuates under its direction and control an organization known as the Utah State bar. All persons licensed in Utah to practice shall be members of the Utah State Bar, in accordance with the rules of the Court. The Utah State Bar, a sui generis entity, may organize in any form legally recognized under the laws of Utah and may sue and be sued, may enter into contracts, and may hold property in its own name. The purposes, duties and responsibilities of the Utah State Bar include, but are not limited to, the following:

(a) To advance the administration of justice according to law;

(b) To aid the courts in carrying on the administration of justice;

(c) To regulate the admission of persons seeking to practice law;

(d) To regulate and to discipline persons practicing law;

(e) To foster and to maintain integrity, competence and public service among those practicing law;

(f) To represent the Bar before legislative, administrative and judicial bodies;

(g) To prevent the unauthorized practice of law;

(h) To promote professionalism, competence and excellence in those practicing law through continuing legal education and by other means;

(i) To provide service to the public, to the judicial system and to members of the Bar;

(j) To educate the public about the rule of law and their responsibilities under the law; and

(k) To assist members of the Bar in improving the quality and efficiency of their practice.

2. Section (C) 2. if the Rules for Integration And Management of the Utah State Bar adopted on July 1, 1981 is hereby repealed and amended as follows:

SECTION (C) 2. Board of Commissioners, Number, Term and Vacancies, Powers and Duties.

There shall be a Board of Commissioners of the Bar consisting of thirteen voting members, eleven elected lawyers and two non-lawyers members appointed by the Court. Except as otherwise provided, the term of office of each commissioner shall be three years and until a successor is elected and qualified. In the event of a lawyer vacancy in the Board, the remaining commissioners shall appoint a successor from among the practicing members of the Bar of the division from which such commissioner was elected, who shall serve until the following annual election.

The Board is granted and may exercise all powers necessary and proper to carry out the duties and responsibilities of the Utah State Bar and the purposes of these rules and shall have all authority which is not specifically reserved to the Court. The Court specifically reserves the authority to: (1) approve Bar admission and licensure fees; (2) approve all rules and regulations formulated by the Board for admissions, professional conduct, client security fund, fee arbitration, procedures of discipline, legislative activities, unauthorized practice of law, and bar examination review and appeals; (3) review all appeals from the findings of the Board on formal disciplinary matters; and (4) establish appropriate rules and regulations governing mandatory continuing legal education.

DATED this 27 day of May, 1993.

UTAH SUPREME COURT

/s/ Gordon R. Hall
Gordon R. Hall
Chief Justice

/s/ Richard C. Howe
Richard C. Howe
Associate Chief Justice

/s/ I. Daniel Stewart
I. Daniel Stewart
Justice

/s/ Christine M. Durham
Christine M. Durham
Justice

/s/ Michael D. Zimmerman
Michael D. Zimmerman
Justice

RULES GOVERNING ADMISSION TO THE UTAH STATE BAR

[SEAL]

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RULES GOVERNING ADMISSION TO THE BAR

RULE ONE
Definitions

Section 1-1. **Definitions.** As used in the rules relating to admission, the following terms shall be given the following meanings, except as otherwise provided or may result from necessary implication from the rule.

Approved Law School. An "approved law school" is one which is fully or provisionally approved by the American Bar Association pursuant to its Standards and Rules of Procedure for Approval of Law Schools.

Attorney Applicant. An "attorney applicant" is any person who satisfies the requirements of Rule 4.

Student Applicant. A "student applicant" is any applicant for admission to the Bar who does not qualify as an "attorney applicant" under Rule 4.

RULE TWO
Board of Commissioners – General Powers

Except as otherwise indicated the word "Board" as used in these rules refers to the Board of Commissioners of the Utah State Bar. For the purposes of these rules,

applicants are classified as either "student applicants" or "attorney applicants."

Section 2-1. **Admission to the Bar.** The Board shall recommend and certify to the Supreme Court for admission to the Bar such persons, and only such persons, who possess the necessary qualifications of learning, ability and character which are a prerequisite to the privilege of engaging in the practice of law, and who fulfill the requirements for admission to the bar, as provided by these rules.

Section 2-2. **Subpoena Power.** Any member of the Board, or the Executive Director or the Secretary or an Assistant Secretary thereof, shall have power to issue subpoenas for the attendance of witnesses or for he [sic] production of documentary evidence before the Board or before anyone authorized to act in its behalf.

Section 2-3. **Administration of Oaths.** Any member of the Board or the Executive Director shall have power to administer oaths in relation to any matter within the functions of the Board.

Section 2-4. **Taking of Testimony.** Any member of the Board, and any other person who has power to administer oaths, shall have power, upon order of the Board, to take testimony in reference to any matter within the function of the Board.

Section 2-5. **Regulations.** The Board is empowered to adopt and enforce such reasonable regulations and to appoint such committees in furtherance of the purpose of these rules and to facilitate their administration as may be necessary or advisable.

RULE THREE
Qualifications for Admission of Student Applicants

Section 3-1. **Requirements of Student Applicants.** To be recommended as a student applicant for admission to the Bar, a person must:

1. Have filed an application for Bar Examination and Admission to the Bar as a student applicant in accordance with Rule 5;
2. Be at least twenty-one years old;
3. Have graduated with an LL.B, J.D., or equivalent degree from an approved law school.
4. Be of good moral character and have satisfied the requirements of Rule 6;
5. Have successfully passed the Bar Examination as prescribed in Rule 7;
6. Have complied with the provisions of Rule 12 concerning enrollment fees;
7. Have successfully passed the Multistate Professional Responsibility Examination (MPRE) as prescribed in Rule 7-8.

Section 3-2. **Foreign Law School Applicants.** Applicants who have not graduated from an ABA accredited law school, but who have graduated from a foreign law school in a country where principles of English common law form the basis for the country's jurisprudence, may be recommended for admission to the Bar under the following conditions:

1. Have filed an application for Bar Examination and Admission to the bar as a foreign law school applicant in accordance with Rule 5;

2. Be at least twenty-one years old;

3. Have (a) been admitted to practice in the jurisdiction where the applicant attended law school, and (b) successfully completed, within twenty-four (24) consecutive months, not less than twenty-four (24) semester hours, or their equivalent in quarter hours, at an ABA-approved law school, including no less than one course each in constitutional law, civil procedure, criminal procedure, legal ethics and evidence.

4. Be of good moral character and have satisfied the requirements of Rule 6;

5. Have successfully passed the Bar Examination as prescribed in Rule 7;

6. Have complied with the provisions of Rule 12 concerning enrollment fees;

7. Have successfully passed the Multistate Professional Responsibility Examination (MPRE) as prescribed in Rule 7-8.

Section 3-3. **Other Foreign Law School Graduates.** All other students and graduates from foreign law schools not meeting the requirements of Section 302 may be recommended only if they have been admitted to an ABA approved law school, consistent with Standard 308 of the American Bar Association Standards for Approval of Law Schools, and have completed the required course of study resulting in a LL.B., or J.D. degree from that school.

Section 3-4. **Foreign Law Schools.** A foreign law school, for purposes of these rules, is any school located outside of the U.S. and its protectorates, and accredited by that jurisdiction's legal accreditation body, if one

exists, or who's [sic] graduates are otherwise permitted by that jurisdiction's highest court to practice law.

RULE FOUR
Qualifications for Admission of Attorney Applicants

Section 4-1. **Requirements of Attorney Applicants.** To be recommended as an attorney applicant for admission to the Bar, a person must:

1. Have filed an application for the Utah Bar Examination and Admission to the Bar as an attorney applicant in accordance with Rule 5;

2. Be at least twenty-one years old;

3. Have been admitted to the practice of law before the highest court of a sister state or the District of Columbia for no less than five years, and have been substantially and lawfully engaged in the practice of law in such jurisdiction for any four of the five years immediately preceding the filing of the application. For purposes of this rule, the practice of law includes the following activities or the equivalent thereof:

   (a) sole practitioner in a private law firm;

   (b) partner, shareholder, associate, or one of counsel in a private or public law firm;

   (c) officer of a corporation or other business organization whose principal responsibilities include rendition of legal advice and/or assistance;

   (d) government employee whose principal duties are providing legal advice to the governmental agency by which he or she is

employed or representing such agency before the courts;

(e) service in the armed forces in the Judge Advocate department in a legal capacity in any state;

(f) judge of a court of general or appellate jurisdiction requiring admission to the Bar as a qualification for admission thereof;

(g) law clerk to a judge of a court of general or appellate jurisdiction;

(h) teaching full-time in an approved law school.

4. Be of good moral character and have satisfied the requirements of Rule 6;

5 Have successfully passed the Bar Examination as prescribed in Rule 10-1;

6. Have complied with the provisions of Rule 12 concerning enrollment fees;

7. Have successfully passed the Multistate Professional Responsibility Examination (MPRE) as prescribed in Rule 7-8.

RULE FIVE
Application Forms and Fees

Each applicant of admission must file an application for examination and admission to the Utah State Bar on a form prescribed by the Board, which shall include an authorization and release to enable the Board to obtain information concerning the applicant.

Section 5-1. **Applications.** All applicants shall file completed applications for permission to take the Bar

Examination and for Admission to the practice of law in this state with the Utah State Bar office by October 1 preceding the February Bar Examination and by March 1 preceding the July Bar Examination.

Section 5-2. **Applicant Filing Fees.** Filing fees shall be established by the Board and shall be submitted with the application according to the deadlines in Section 5-1.

Permission to sit for the Utah Bar Examination may be withheld for any applicant who does not satisfy the documentation requirements ten days before the examination is to be administered.

Section 5-3. **Withdrawal of Applications.** If the application is withdrawn in writing prior to 30 days before the examination date for which the applicant has filed to sit, one-half of the filing fee shall be refunded.

RULE SIX
Character & Fitness

Section 6-1. **Standard of Character and Fitness.** An attorney's conduct should conform to the requirements of the law, both in professional service to clients and in the attorney's business and personal affairs. An attorney should be one whose record of conduct justifies the trust of clients, adversaries, courts, and others with respect to the professional duties owed to them. An applicant whose record manifests a significant deficiency in honesty, trustworthiness, diligence, or reliability shall be denied admission. Applicants must be approved by the Character and Fitness Committee and then approved by the Board prior to sitting for the Bar Examination.

Section 6-2. **The Investigative Process; Investigation Panel Interviews.** Investigations into the character and fitness of applicants may be informal, but shall be thorough, with the object of ascertaining the truth.

(a) The Character and Fitness Committee may conduct an investigation and may act with or without requiring a personal appearance by an applicant.

(b) At the discretion of the Character and Fitness Committee, an applicant may be required to attend an investigation panel interview conducted, by no fewer than three (3) members of the Committee. The investigation panel interview shall be informal but the applicant shall have the rights to counsel and shall be notified by mail of the general factual areas of inquiry. Documentary evidence may be provided to the Character and Fitness panel but no witnesses will be permitted to appear during the interview. The interview shall be a closed proceeding.

(c) After an investigation panel interview has been conduced the Character and Fitness Committee shall promptly notify the applicant that he or she has been approved to sit for the Bar Examination or notify the applicant by mail that the applicant has been denied and set forth generally the reasons for denial.

Section 6-3. **Formal Hearing; Applicant's Request.** In matters where the Character and Fitness Committee determines that an investigation panel interview is unnecessary, or in cases where an applicant has been denied admission by an investigation panel as outlined in this rule, the Character and Fitness Committee shall hold

A formal hearing pursuant to an applicant's request as set forth below. The formal hearing shall be a closed proceeding and may be scheduled whether or not preceded by a panel interview. A decision after a formal hearing is a prerequisite to appeal under the provisions below.

(a) If an applicant has been denied admission as outlined above, an applicant may within twenty (20) days of notice of the decision by the investigation panel request a formal hearing. The request must be made in writing and provided to the Bar's Admission Administrator.

(b) Notice of the formal hearing shall be given at least ten (10) days before the hearing via mail and shall include a statement of the preliminary factual matters of concern constituting the grounds for denial. The names of persons who provide information adverse to the applicant which was in whole or in part a basis for the denial shall be disclosed in the notice.

(c) A formal hearing shall be a *de novo* proceeding attended by no fewer than five (5) but no more than thirteen (13) Character and Fitness Committee members. The applicant has the burden of proof to establish his or her requisite character and fitness to practice law by clear and convincing evidence.

(d) The formal hearing will have a complete stenographic record made by a certified court reporter or an electronic record made by means acceptable in the courts of the State of Utah. All testimony shall be taken under oath. Although no formal rules of evidence or civil procedure will apply, an applicant has the right to counsel, the right to cross-examine witnesses, examine all evidence and the right to present witnesses and

documentary evidence. An applicant is entitled to make reasonable use of the Board's subpoena powers to compel attendance of witnesses and to adduce relevant evidence relating to matters adverse to the applicant.

(e) Written Findings of Fact and Conclusions of Law should be issued no later than forty-five (45) days after the formal hearing and subsequent briefings, if any.

Section 6-4. **Factors Related to Character and Fitness.** In addition to the standards set forth in Rules 6-1 and 6-5 the Character and Fitness Committee may use the following factors to decide whether an applicant possesses the requisite character and fitness to practice law:

(a) the applicant's lack of candor

(b) unlawful conduct

(c) academic misconduct

(d) making of false or misleading statements, including omissions

(e) misconduct in employment

(f) acts involving dishonesty, fraud, deceit or misrepresentation

(g) abuse of legal process

(h) neglect of financial responsibilities

(i) neglect of professional obligations

(j) violation of an order of a court

(k) evidence of mental or emotional instability

(l) evidence of drug or alcohol dependency

(m) denial of admission to the bar in another jurisdiction on character and fitness grounds

(n) past or pending disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction

(o) other conduct bearing upon character or fitness to practice law

In making this determination through the processes described above, the following factors should be considered in assigning weight and significance to prior conduct:

(p) the applicant's age at the time of conduct

(q) the decency of the conduct

(r) the reliability of the information concerning the conduct

(s) the seriousness of the conduct

(t) the factors underlying the conduct

(u) the cumulative effect of conduct or information

(v) the evidence of rehabilitation

(w) the applicant's positive social contributions since the conduct

(x) the applicant's candor in the admissions process

(y) the materiality of any omission or misrepresentations

Section 6-5. **Criminal Conduct; Parole, Probation and Supervised Release.**

1. An applicant convicted of a misdemeanor offense or who has entered a plea in abeyance to any

criminal offense may be asked to appear before members of the Character and Fitness Committee for an investigation panel interview or a formal hearing. In determining whether the applicant is of good character, the Committee will consider the nature and seriousness of the criminal conduct resulting in the conviction(s), mitigating and aggravating factors including completion of terms and conditions of any sentence imposed and demonstration of clearly proven rehabilitation.

2. A rebuttable presumption exists against admission of an applicant convicted of a felony offense. For purposes of this rule, a conviction includes entry of a *nolo contendre* (no contest) plea. An applicant who has been convicted of a felony offense is not eligible to apply for admission until after the date of completion of any sentence, term of probation or term of parole or supervised release whichever occurred last. Upon an applicant's eligibility, a formal hearing as set forth in these Rules before members of the Character and Fitness Committee will be held. Factors to be considered by the Committee include, but are not limited to, the nature and seriousness of the criminal conduct resulting in the conviction(s), mitigating and aggravating factors including completion of terms and conditions of a sentence imposed and demonstration of clearly proven rehabilitation.

Section 6-6. **Appeals from Final Denial; Applicant's Request.** Applicants have the right to appeal a final decision made after a formal hearing as set forth in these Rules. An applicant must file a written request to the Board of Bar Commissioners with the Bar's Admissions Administrator within twenty (20) days of the date of

notice of denial. A pre-determined panel of three (3) Board of Bar Commissioners will conduct a formal review of the final decision. The appeal hearing shall be a closed proceeding and will be limited to consideration of the record produced in the formal hearing. Oral argument will be held at the discretion of the appeal panel and only if such is deemed necessary.

(a) The decision after the formed hearing shall be affirmed if there is substantial and credible evidence to support it.

(b) Applicants will be responsible for payment and obtaining a duly certified copy of the transcript of the formal hearing proceedings or other electronic record copy as described in Rule 6-3(c).

(c) The appeal hearing panel shall within thirty (30) days after the complete formal review issue a written decision.

Section 6-7. **Reapplication After Denial.** Following the final decision, which includes the appellate decision if one was issued, re-application may be made after one year from the date of the decision unless a different time period was specified in writing.

Section 6-8. **Confidentiality; Exceptions.** All records, documents, and sources relating to the admissions process shall not be disclosed other than to the applicant and the applicant's attorney and to Committee members, admissions staff, the Bar's General Counsel, members of the Bar Commission who serve on appeals panels and in appropriate cases, the Bar's Office of Professional Conduct as contemplated by these Rules. Confidential information includes, but is not limited to the application and

supporting documents including letters of recommendation, reports and documents form other associations, agencies, employers, and courts of law. Confidential information in some instances may be disclosed under Rule 6-10.

Section 6-9. **Communications Relating to Applications.**

Letters or information relating to an applicant in which the writer requests confidentiality are to be held confidential and not placed in evidence or otherwise made available to the decision-making body or anyone else involved in a decision-making capacity with respect to the admission of the applicant. Any such body or person having knowledge of the content of the information, including members of the Board, shall withdraw from participation in the matter, and if necessary, the Board shall appoint persons necessary to replace those required to withdraw from the decision-making process.

Section 6-10. **Release of Information.** Except as otherwise authorized by order of the Utah Supreme Court, the Bar or the Character and Fitness Committee shall deny requests for confidential information but may grant the request only if made by:

(a) An entity authorized to investigate the qualifications of persons for admission to practice law; or

(b) An agency or entity authorized to investigate the qualifications of persons for government employment; or

(c) A lawyer discipline enforcement agency; or

(d) An agency or entity authorized to investigate the qualifications of judicial candidates.

If the request is granted, information shall be released only upon certification by the requesting agency or entity that the confidential information shall be used for authorized purposes only. If one of the above-enumerated entities requests confidential information, the Character and Fitness Committee or the Bar shall give written notice to the applicant that the confidential information will be disclosed within ten (10) days unless the applicant obtains an order from the Supreme Court restraining such disclosure.

RULE SEVEN
Student Bar Examination

Section 7-1. **Content.** The Student Bar Examination shall consist of such questions as the Board shall select relating to the practice of law. The essay portion of the examination shall consist of twelve questions, some of which may be taken from the Multistate Essay Examination (MEE). One essay question shall deal with Legal Ethics.

Section 7-2. **Composition.** The Student Bar Examination shall include an essay component and the Multistate Bar Examination (MBE). The MBE and essay portions ordinarily will be given over a two-day period, with one day allocated to the MBE and one day to essay questions.

Section 7-3. **Preparation of the Essay Examination.** Essay questions may be:

1) taken from the Multistate Essay Examination;

2) prepared by practitioners and/or professors of law;

3) or both.

Model answers or outlines analyzing the issues presented shall be prepared by the author of the question. The answer or outline shall be submitted with the question to the Bar Examiner Review Committee.

The test questions and model answers shall be reviewed by the Bar Examiner Review Committee. The Bar Examiner Review Committee shall be independent of the Bar Examiners and shall determine the adequacy and appropriateness of all questions and model answers. The Bar Examiner Review Committee may require the questions and model answers to be rewritten or modified.

Section 7-4. **Grading the Essay Examination.** Essay answers shall be graded on a five-point scale. Each answer shall be graded on the following basis:

(A) No credit shall be given to an unanswered question or to a nonresponsive answer;

(B) A grade of 1 shall be given to an answer that is well below average;

(C) A grade of 2 shall be given to an answer that is below average;

(D) A grade of 3 shall be given to an answer that is average;

(E) A grade of 4 shall be given to an answer that is above average;

(F) A grade of 5 shall be given to an answer that is well above average.

Section 7-5. **Uniformity of Grading.** In order to assure maximum fairness and uniformity in grading, the Board shall prescribe procedures and standards for grading to be used by all graders.

Section 7-6. **Method for Combining Scores.** After all essay questions are graded, the grades received shall be added together for each applicant and scaled to the MBE portion of the examination. MBE scaled scores and essay scaled scores shall be combined according to the standard deviation method. An applicant who receives a combined score of 130 or above by this method passes the Bar Examination.

Section 7-7. **Administration of Essay Examinations Under Special Circumstances.** Applicants who have medical, physical, or cognitive disabilities may request examinations be administered under special circumstances to accommodate their disability. Cognitive disabilities do not include "English as a second language." Such requests shall be made in writing at the date of application. Each request shall be reviewed and any special accommodation shall be made on an individual basis.

Section 7-8. **Multistate Professional Responsibility Examination. (MPRE).** Each applicant must achieve an MPRE scaled score of 80 within two years before or following the date of the examination and provide proof thereof.

The MPRE is administered by the National Conference of Bar Examiners. Any person seeking to take the MPRE shall file an application with and pay the fee specified by the National Conference of Bar Examiners.

To be eligible to have his or her score on the MPRE accepted by the Board as satisfying the requirements of this rule, a student applicant must have completed one year of law school.

RULE EIGHT
Retaking of Examination

Section 8-1. **Students Failing Bar Examination.** All applicants failing will be required to retake the complete Bar Examination. Scores on the essay or MBE portions of the examination will not be carried over.

RULE NINE
Transferability of Scores

Section 9-1. Scores achieved on the Multistate Bar Examination (MBE) administered in a jurisdiction other than Utah will not be accepted unless the examination is taken concurrently with the Utah examination.

RULE TEN
Attorney Examination

Section 10-1. **Content.** The Attorney Examination consists of the essay portion of the Student Bar Examination and will [sic] administered the same date and time as the Student Bar Examination. The Attorney Examination will be graded and scaled to the MBE according to the procedures set forth in Rule 7-6. The passing applicant must achieve a score of 130 on the examination.

Section 10-3. **Failing Applicant.** An applicant who fails the Attorney Examination may sit for subsequent

examinations, including successive examinations, upon payment of any required fees.

RULE ELEVEN
Unsuccessful Applicants; Right of Inspection

Section 11-1. **Test Inspection.** Examinations shall be retained for not less than six (6) months after the date that examination results have been announced. An unsuccessful applicant shall be entitled to a reasonable inspection of:

(1) the essay questions;

(2) the applicant's answers to the essay portion of the examination;

(3) sample answers for each question.

This rule does not permit applicants to inspect the Multi-State Bar Examination.

Section 11-2. **Bar Examination Grading.** The Board shall only review petitions of failing applicants who claim that this failure was because of a substantial irregularity in the administration of the examination which resulted in manifest unfairness or because of mathematical inaccuracy in the scoring process. The petition must be filed in writing by the applicant within thirty (30) days after notice to the applicant of examination results.

Section 11-3. **Bar Examination Review and Appeal Procedure.** Any person who has failed to pass the Utah State Bar Examination may, within thirty (30) days after service of written notice thereof, file a petition with the Executive Director of the Utah State Bar directed to the Board of Commissioners, requesting a review of the

determination that petitioner has failed the Bar Examination. The petition shall contain a short and plain statement of the claim showing that the petitioner is entitled to relief based on Rule 11 of the Rules Governing Admission to the Utah State Bar. **Relief shall be granted only upon showing that the petitioner failed the examination because of a substantial irregularity in the administration of the examination which resulted in manifest unfairness or because of mathematical inaccuracy in the scoring process.** The Board of Bar Commissioners and/or any review committee designated by it shall not reread examination answers or substitute their judgment for that of the Committee of Bar Examiners in accordance with the Rules Governing Admission.

(a) Unless the President of the Utah State Bar appoints a special review committee, the review committee shall consist of nor more than three (3) members of the Admissions Committee. The committee shall review all relevant evidence and may conduct a hearing if necessary. The chairperson of the committee shall notify the petitioner and the Deputy General Counsel in Charge of Admissions in writing of the time and place set for the hearing, if one is required. Petitioners setting forth common issues may be consolidated in whole or in part as determined by the chairperson of the review committee. The committee shall file with a panel of three (3) members of the Board of Commissioners its written findings of fact and recommendations on all petitioners. The Board of Commissioners panel shall make its decision on each petition and shall notify each petitioner in writing of its decision in the form of Findings of Fact, Conclusions of Law and Final Decision.

(b) Within thirty (30) days after the date of the Final Decision, the petitioner may appeal to the Utah Supreme Court by filing a written petition for review with the clerk of the Supreme Court. At the time of filing the petition for review, the petitioner shall pay the required filing fee to the clerk of the Supreme Court. The clerk will not accept a petition for review unless the filing fee is paid.

(c) The petition for review shall state the name of the petitioner and shall designate the Utah State Bar as respondent. The petition for review must contain the following: a statement of the issues presented and the relief sought; a statement of the facts necessary to an understanding of the issues presented by the petitioner; copies of the Final Decision and any other documents considered by the panel of the Board of Commissioners in making its decision; and a certificate reflecting service of the petition for review upon the Executive Director of the Utah State Bar.

(d) The record of proceedings shall be prepared by the Executive Director and shall be filed with the clerk of the Supreme Court within fifteen (15) days following the filing of the petition for review. Within thirty (30) days after service of the petition on the Executive Director of the Utah State Bar, the Utah State Bar, as respondent, shall file a response to the petition for review with the clerk of the Supreme Court. A copy of the response shall be mailed at the time of filing to the petitioner by respondent.

(e) The clerk of the Supreme Court will notify the parties if any additional briefing or oral argument is required. Upon entry of the Court's

decision, the clerk shall give notice of the decision to petitioner and respondent.

RULE TWELVE
Certificate of Admission, Membership and Fees

Section 12-1. **Fees.** Upon notification that the Board has approved the applicant for admission and before an [sic] motion is made to the Supreme Court for admission, the applicant shall pay to the Utah State Bar the fee for an active or inactive member as appropriate, and also the admission fee of fifty dollars ($50.00) to be transmitted by the Utah State Bar to the Clerk of the Supreme Court upon the issuance of the applicant's Certificate of Admission.

Section 12-2. **Non-compliance.** If the applicant fails to comply with the preceding section and does not appear for admission within six (6) months after being called to appear before the Supreme Court for admission, the approve [sic] of his or her application for admission to the Bar shall be deemed to be withdrawn. The Board may reapprove such application upon a satisfactory showing of the qualifications of the applicant at the time he appears for admission to the Bar, or may grant an extension of the time for making appearance upon petition.

Section 12-3. **There are two admission ceremonies each calendar year.** To be admitted to the Utah State Bar you must participate in an Admission Ceremony and pay the proper fees so that you [sic] name can be put on the motion submitted to the court the day of the ceremony.

No other motions for admission to the Bar will be submitted to the court until the next scheduled Admissions Ceremony. NO EXCEPTIONS.

RULE THIRTEEN
Practice of Law in Utah

Section 13-1. **Practice of Law.** To practice law in Utah, an attorney must be an active member of and in good standing with the Utah State Bar.

Section 13-2. **Admissions Pro Hac Vice.** For the purpose of an individual case, no member of the bar of any jurisdiction may appear in the courts of this state without associating a licensed active attorney upon whom pleading and other papers may be served and who shall be responsible for the ethical conduct of such attorney under the provisions of the Rules of Conduct of the Utah State Bar.

RULE FOURTEEN
Readmission after Resignation or Disbarment

Section 14-1. **Readmission after Resignation.** Readmission subsequent to the resignation of a member of the Bar shall be by petition in writing verified by the petitioner, addressed to the Board and filed with the Executive Director. The petition shall set forth the name, age, residence and address of the petitioner, his residence and occupation during the period subsequent to his resignation, the reasons for this resignation and a copy of the Order of the Supreme Court, if any, with respect to the

resignation. The petition must be accompanied by a filing fee of $200.00.

Section 14-2. **Readmission after Disbarment.** An applicant for readmission to the Bar after disbarment shall satisfy all requirements of Rule 3 as stated above, and shall satisfy all other requirements imposed by the Supreme Court.

RULE FIFTEEN
New Lawyer Continuing Legal Education
Effective July 1991

Section 15-1. **The New Lawyer Continuing Legal Education program** is divided into three parts, and is designed to ease the transition into practice. All Utah Attorneys who have an active license are required to comply with Mandatory Continuing Legal Education "MCLE". As stated in Rule 3 of the MCLE Rules, new admittess will meet their first two-year requirement through the New Lawyer Continuing Legal Education "NLCLE" program. The program is as follows:

a. A one day "NLCLE" program which is given annually.

b. Four monthly "NLCLE" workshops (three hours each) that will be sponsored by the Utah State Bar.

c. Twelve hours of approved live continuing legal education.

If you serve as a judicial law clerk, practice law out-of-state, have an inactive licenses, [sic] or have a hardship

you may apply for an extension or a waiver. For further information, please contact Sydnie W. Kuhre at 531-9095.

RULE SIXTEEN
Licensing of Foreign Legal Consultants

Section 16-1. **General Regulation as to Licensing.** IN ITS DISCRETION, the Utah Supreme Court may license to practice in this State as a Foreign Legal Consultant, without examination, an applicant who:

(a) is a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to practice as attorneys or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority;

(b) possesses the good moral character and general fitness requisite for a member of the Utah State Bar; and

(c) intends to practice as a legal consultant in this State and to maintain an office in this State for that purpose.

(d) has passed the MultiState Professional Responsibility Examination.

Section 16-2. **Proof Required.** An applicant under this Rule shall file with the Utah State Bar:

(a) a certificate from the professional body or public authority in such foreign country having final jurisdiction over professional discipline, certifying as to the applicant's admission to practice and the date thereof, and as to her or

his good standing as such attorney or counsel at law or the equivalent;

(b) a duly authenticated English translation of such certificate, if it is not in English; and

(c) such other evidence as to the applicant's educational and professional qualifications, good moral character and general fitness, and compliance with the requirements of Sections 1 and 6 of this Rules [sic] as the Utah Supreme Court may require.

UTAH CONSTITUTION

ARTICLE XXIII

Section 1. [Amendments: proposal, election.]

Any amendment or amendments to this Constitution may be proposed in either house of the Legislature, and if two-thirds of all the members elected to each of the two houses, shall vote in favor thereof, such proposed amendment or amendments shall be entered on their respective journals with the yeas and nays taken thereon; and the Legislature shall cause the same to be published in at least one newspaper in every county of the state, where a newspaper is published, for two months immediately preceding the next general election, at which time the said amendment or amendments shall be submitted to the electors of the state for their approval or rejection, and if a majority of the electors voting thereon shall approve the same, such amendment or amendments shall become part of this Constitution.

The revision or amendment of an entire article or the addition of a new article to this Constitution may be proposed as a single amendment and may be submitted to the electors as a single question or proposition. Such amendment may relate to one subject, or any number of subjects, and may modify, or repeal provisions contained in other articles of the Constitution, if such provisions are germane to the subject matter of the article being revised, amended or being proposed as a new article.

Sec. 2. [Revision of the Constitution.]

Whenever two-thirds of the members, elected to each branch of the Legislature, shall deem it necessary to call a convention to revise or amend this Constitution, they shall recommend to the electors to vote, at the next general election, for or against a convention, and, if a majority of all the electors, voting at such election, shall vote for a convention, the Legislature, at its next session, shall provide by law for calling the same. The convention shall consist of not less than the number of members in both branches of the Legislature.

Sec. 3. [Submission to electors.]

No Constitution, or amendments adopted by such convention, shall have validity until submitted to, and adopted by, a majority of the electors of the State voting at the next general election.